REMARKS

I. Status and Disposition of the Claims

In the instant application, claims 1-27 and 29-30, of which claims 1, 12, 23, 24, 25 and 30 are independent, are pending and under consideration on the merits.

In the Office Action[1] mailed April 28, 2009, the following actions were taken:

1) Claims 1-11, 23[2], 25-27, 29 and 30 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

2) Claims 1-4, 6, 8-15, 17, 19-25, 27[3], 29, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith et al. (U.S. 2004/0225507) (hereinafter *Smith*) in view of Wilson et al. (U.S. 2002/0133387) (hereinafter *Wilson*);

3) Claims 5, 7, 16, 18 and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and *Wilson* in further view of Arunapuram et al. (U.S. 2002/0019759) (hereinafter *Arunapuram*).

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[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

[2] The Office Action at page 3 includes claim 23 in its list of claims rejected under § 101 but then incorrectly refers to claim 13 in what appears to be its discussion of rejection of claim 23 under 35 U.S.C. § 101. See Office Action at 3. In this Response, Applicant treats claim 23 as rejected under 35 U.S.C. § 101.

[3] The Office Action at page 4 does not include claim 27 in its list of claims rejected under 35 U.S.C. § 103 due to *Smith* in view of *Wilson*, but then discusses claim 27 as so rejected at page 6 of the Office Action. In this Response, Applicant treats claim 27 as rejected under 35 U.S.C. § 103.

II. Interview Summary

Applicant thanks Examiner Plucinski for the courtesies extended in granting and conducting a telephone interview on June 5, 2009 with the undersigned and student associate, Ceyda A. Maisami. The substance of the interview is summarized herein.

During the interview on June 5, 2009, Examiner Plucinski indicated that she reviewed amended representative claim 23 and that claim 23 would need further amendments to overcome the rejection under 35 U.S.C. § 101. Examiner Plucinski also indicated that the proposed amendments satisfied the requirements of 35 U.S.C. § 101 for claims 1-11, 25-27, 29 and 30 and that these amendments would overcome the rejection under 35 U.S.C. § 101 for these claims.

Moreover, Examiner Plucinski and Applicant's representatives discussed the prior art references *Wilson* and *Smith* in comparison to Applicant's pending application, specifically "selecting a source location based on the availability date" where "the availability date is determined independently of the requested delivery date." See Interview Summary at 2. Examiner Plucinski also suggested the positive recitation of determining the availability date independently of the delivery date. Although no agreement was reached on the claims' language, Applicant's representatives indicated that they would consider such limitations and file a written response accordingly for Examiner Plucinski's consideration. Further, Examiner Plucinski agreed to consider proposed claim amendments.

III. Amendments to the Claims

In this Amendment and Response, Applicant amends claims 1-4, 12, 23-25, and 30. Support for the claim amendments can be found, for example, at paragraphs [0028], [0047], [0052], [0056] and [0058].

IV. Response to Rejections

In this Response to the Office Action, Applicant respectfully traverses the rejection listed above and requests reconsideration of the rejections based on the foregoing amendments and the following remarks.

A. The Rejection of the Claims under 35 U.S.C. § 101 is Improper.

Claims 1-11, 23, 25-27, 29, and 30 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. See Office Action at 2. Applicant respectfully disagrees with and traverses this rejection, but amends claims to place independent claims 1, 23, 25, and 30 and the related dependent claims, in allowable condition. Specifically, Applicant proposes amendments to the claims to tie them more clearly to another statutory category. These amendments are not made to distinguish the independent claims over the prior art of record, but rather to clarify the subject matter sought to be patented.

B. The Rejection of the Claims under 35 U.S.C. § 103(a) is Improper.

i. Claims 1-4, 6, 8-15, 17, 19-25, 27, 29, and 30

Claims 1-4, 6, 8-15, 17, 19-25, 27, 29, and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* in view of *Wilson*. See Office Action at 4. Applicant respectfully disagrees with and traverses this rejection.

Smith and *Wilson* fail to teach or suggest each and every element of amended claim 1, nor do they teach amended claim 1 as a whole. In the present case, amended independent claim 1 recites, *inter alia*, "selecting... the source location based on the availability date" and "scheduling... the trip based on the requested delivery date...."

The Office Action confirms that *Smith* does not disclose selecting a source location based on "the availability date of the good at the source location," and "determin[ing] [the availability date] independently of the requested delivery date," and does not specifically state "the scheduling of the trip is based on the requested delivery date." See Office Action at 4-5. *Wilson* fails to cure the deficiencies of *Smith*. That is, *Wilson* also fails to teach, disclose or suggest the above cited elements. The Office Action cites *Wilson*'s Fig. 5A with corresponding detailed description as teaching "choos[ing] the source location based on the availability and schedul[ing] the delivery to ensure the requested delivery date is met." See Office Action at 5. However, nowhere in Fig. 5A, or elsewhere in *Wilson*, is there a mention of "selecting... the source location based on the availability date," and "scheduling... the trip based on the requested delivery date," as recited in claim 1.

Wilson's Fig. 5A illustrates "the basic rules by which the promising engine determines which warehouse in the distribution system will seek to fulfill a request." *Wilson* at para. [0049]. However, *Wilson* does not select a warehouse based on the availability date of a good at the warehouse and does not disclose scheduling a trip let alone basing the scheduling on a requested delivery date.

After receiving a request from a client, the promising engine in *Wilson* "examines the request to determine the closest warehouse to the customer." *Wilson* at para. [0049]. "The warehouse closest to the customer geographical location is designated by the promising engine 130 as the primary warehouse from which the request should be sourced...." *Id.* The promising engine then checks to see "if the primary warehouse can meet the criteria identified by the request, such as whether the warehouse contains the item or items requested, can meet customer or client identified shipping terms." See *Wilson* at para. [0050]. Applicant respectfully submits that neither "geographical location" nor "shipping terms" are "the availability date of the good at the source location." Therefore, unlike the method of Applicant's claim 1, *Wilson* does not teach "selecting... the source location based on the availability date of the good at the source location."

Moreover, as illustrated in steps 540 and 550 in Fig. 5A, there are two possible outcomes for the method in Fig. 5A of *Wilson*: "warehouse selected" and "request cannot be fulfilled." *Wilson* is silent as to what happens after the warehouse is "selected." Assuming *arguendo* that *Wilson's* selected warehouse is the selected

source location, *Wilson* is silent about "scheduling [a] trip," let alone "scheduling the trip based on the requested delivery date...."

For at least the reason noted above, claims 12, 23-25, and 30, which recite similar elements rejected under the same rationale, and claims 2-4, 6, 8-11, 13-15, 17, 19-22, 27 and 29, which depend from claims 1, 12, and 25, are allowable under 35 U.S.C. § 103(a).

ii. Claims 5, 7, 16, 18, 26 and 27

Claims 5, 7, 16, 18, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Smith* and *Wilson* in further view of *Arunapuram*. See Office Action at 6. Claim 27 was rejected based on Official Notice that "the use of Rush orders are well known" and therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify *Smith* and *Wilson*. See Office Action at 6. Applicant respectfully disagrees with and traverses both of these rejections.

The elements of claims 1, 12, and 25 are incorporated by reference into claims 5, 7, 16, 18, 26, and 27 respectively. As noted above, claims 1, 12, and 25 are not taught by *Smith* or *Wilson*. Neither Official Notice of Rush orders nor *Arunapuram* overcome the deficiencies of *Smith* and *Wilson*. Therefore, whether or not rush orders comprise an obvious feature, or whether or not selecting a trip based on dangerous goods or cost information was disclosed in *Arunapuram*, incorporating these features into *Smith* and *Wilson* would not result in the invention recited in claims 5, 7, 16, 18, 26, and 27 as a whole.

For at least the reasons noted above, claims 5, 7, 16, 18, 26, and 27, which recite similar elements rejected under the same rationale, are allowable under 35 U.S.C. § 103(a). See Office Action at 6.

V. Conclusion

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: July 28, 2009

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